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September 24, 2012

Senator Orrin G. Hatch
Ranking Member
Senate Committee on Finance
104 Hart Senate Office Building
Washington, D.C. 20510

Representative Dave Camp
Chairman
House Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Senator Hatch and Representative Camp:

Thank you for your letter of September 17, 2012. I am certain that as Chairman and Ranking Member of the congressional committees that oversee the IRS, you share my interest in ensuring compliance with our tax laws and promoting accountability. I therefore write to correct your apparent misimpressions concerning the right of state officials to obtain and utilize information that may appear on tax returns in carrying out our law enforcement functions.

Under our federalist system, each state has a fundamental interest in ensuring compliance with its tax laws and in regulating certain activities of nonprofits. New York's False Claims Act empowers my office to bring cases against entities or individuals that have committed tax fraud.¹ My office is also responsible for overseeing nonprofits that conduct activities in our state, and for protecting New York donors from the fraudulent solicitation of funds for charitable purposes.² To this end, New York's Executive Law and Estates, Powers and Trusts Law require that my office maintain a register of charitable organizations that conduct activities in New York, or that raise funds in amounts above certain thresholds from New Yorkers.³ Over 60,000 nonprofit organizations are registered with my office's Charities Bureau, including a number of the 501(c)(4) groups referenced in your letter.

¹ See N.Y. State Fin. Law § 187, *et. seq.*

² See N.Y. Exec. Law, Art. 7-A; N.Y. Estates, Powers and Trusts Law, Art. 8.

³ See N.Y. Exec. Law §§ 172 & 172-A; N.Y. Estates, Powers and Trusts Law § 8-1.4(c).

You assert in your letter that state officials may obtain tax returns and tax return information “*only* upon written request to the IRS and *only* to the extent necessary to administer State tax laws and laws regulating the solicitation or administration of charitable assets” (emphasis added). Your letter concludes by requesting that my office – and presumably all state and local law enforcement agencies – “direct” all tax-related inquiries to the IRS.

While you correctly identify procedures for obtaining tax returns and tax return information from the IRS, those procedures do not prohibit state authorities from requesting such documents or information directly from taxpayers. The Internal Revenue Code in no way precludes a nonprofit or business from sharing its own tax returns or tax return information with law enforcement officials voluntarily, in response to a subpoena, or as required by state laws requiring disclosure. Indeed, state and local law enforcement agencies frequently seek such information when investigating criminal activities, including organized crime, narcotics trafficking, financial fraud and money laundering.

In fact, as the IRS has acknowledged, nonprofits routinely share their federal tax returns with state officials to satisfy state registration and financial reporting requirements.⁴ Consistent with this framework, New York joins over 35 other states that accept or require federal tax forms in lieu of state-specific filings. States are, of course, free to adopt their own reporting requirements, and New York, like many other states, requires nonprofits to file additional state-specific forms.⁵

I hope you share my understanding of federalist principles, which contemplate a crucial role for state law enforcement.⁶ The recent activities of some tax-exempt organizations and businesses have been matters of great concern to New Yorkers. While my office respects applicable federal requirements and restrictions, I will continue to perform my duties and enforce the laws of the State of New York.

Sincerely,

A handwritten signature in blue ink, appearing to read "E.T. Schneiderman", followed by a long horizontal flourish.

Eric T. Schneiderman
Attorney General

cc: Senator Max Baucus
Chairman, Senate Committee on Finance

Representative Sander Levin
Ranking Member, House Committee on Ways and Means

⁴ See, e.g., 2011 Instructions for IRS Form 990, Appendix I (“Some states and local governmental units will accept a copy of Form 990 or 990-EZ in place of all or part of their own financial report forms.... [A]dditional information [required by the jurisdiction] should be submitted with the Form 990 or 990-EZ filed with the IRS....”); IRS Publication 557, at 12 (“Copies of Forms 990, 990-EZ, or 990-PF may be used [by an organization] to satisfy state reporting requirements.”)

⁵ See N.Y. Exec. Law § 172-B; N.Y. Estates, Powers and Trusts Law § 8-1.4(f,h); 13 NYCRR §§ 91.5(c) & 91.6(b); see also <http://www.charitiesnys.com>.

⁶ See, e.g., *The Federalist* Nos. 9, 32, 39 & 45.